



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB3677

by Rep. Daniel Didech

SYNOPSIS AS INTRODUCED:

New Act

735 ILCS 5/17-101	from Ch. 110, par. 17-101
735 ILCS 5/17-102	from Ch. 110, par. 17-102
735 ILCS 5/17-105	from Ch. 110, par. 17-105
735 ILCS 5/17-106	from Ch. 110, par. 17-106

Creates the Uniform Partition of Heirs Property Act. Defines terms. Provides for: applicability; relation to other law; service; notice by posting; commissioners; determination of value; cotenant buyout; partition alternatives; considerations for partition in kind; open-market sale, sealed bids, or auction; and report of open-market sale. Makes conforming changes in the Code of Civil Procedure. Effective immediately.

LRB101 08638 LNS 53722 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Uniform Partition of Heirs Property Act.

6 Section 2. Definitions. In this Act:

7 (1) "Ascendant" means an individual who precedes another
8 individual in lineage, in the direct line of ascent from the
9 other individual.

10 (2) "Collateral" means an individual who is related to
11 another individual under the law of intestate succession of
12 this State but who is not the other individual's ascendant or
13 descendant.

14 (3) "Descendant" means an individual who follows another
15 individual in lineage, in the direct line of descent from the
16 other individual.

17 (4) "Determination of value" means a court order
18 determining the fair market value of heirs property under
19 Section 6 or 10 or adopting the valuation of the property
20 agreed to by all cotenants.

21 (5) "Heirs property" means real property held in tenancy in
22 common which satisfies all of the following requirements as of
23 the filing of a partition action:

1 (A) there is no agreement in a record binding all the
2 cotenants which governs the partition of the property;

3 (B) one or more of the cotenants acquired title from a
4 relative, whether living or deceased; and

5 (C) Any of the following applies:

6 (i) 20 percent or more of the interests are held by
7 cotenants who are relatives;

8 (ii) 20 percent or more of the interests are held
9 by an individual who acquired title from a relative,
10 whether living or deceased; or

11 (iii) 20 percent or more of the cotenants are
12 relatives.

13 (6) "Partition by sale" means a court-ordered sale of the
14 entire heirs property, whether by auction, sealed bids, or
15 open-market sale conducted under Section 10.

16 (7) "Partition in kind" means the division of heirs
17 property into physically distinct and separately titled
18 parcels.

19 (8) "Record" means information that is inscribed on a
20 tangible medium or that is stored in an electronic or other
21 medium and is retrievable in perceivable form.

22 (9) "Relative" means an ascendant, descendant, or
23 collateral or an individual otherwise related to another
24 individual by blood, marriage, adoption, or law of this State
25 other than this Act.

1 Section 3. Applicability; relation to other law.

2 (a) This Act applies to partition actions filed on or after
3 the effective date of this Act.

4 (b) In an action to partition real property under Article
5 XVII of the Code of Civil Procedure the court shall determine
6 whether the property is heirs property. If the court determines
7 that the property is heirs property, the property must be
8 partitioned under this Act unless all of the cotenants
9 otherwise agree in a record.

10 (c) This Act supplements Article XVII of the Code of Civil
11 Procedure and, if an action is governed by this Act, replaces
12 provisions of Article XVII of the Code of Civil Procedure that
13 are inconsistent with this Act.

14 Section 4. Service; notice by posting.

15 (a) This Act does not limit or affect the method by which
16 service of a complaint in a partition action may be made.

17 (b) If the plaintiff in a partition action seeks an order
18 of notice by publication and the court determines that the
19 property may be heirs property, the plaintiff, not later than
20 10 days after the court's determination, shall post and
21 maintain while the action is pending a conspicuous sign on the
22 property that is the subject of the action. The sign must state
23 that the action has commenced and identify the name and address
24 of the court and the common designation by which the property
25 is known. The court may require the plaintiff to publish on the

1 sign the name of the plaintiff and the known defendants.

2 Section 5. Commissioners. If the court appoints
3 commissioners pursuant to Article XVII of the Code of Civil
4 Procedure, each commissioner, in addition to the requirements
5 and disqualifications applicable to commissioners in Article
6 XVII of the Code of Civil Procedure, must be disinterested and
7 impartial and not a party to or a participant in the action.

8 Section 6. Determination of value.

9 (a) Except as otherwise provided in subsections (b) and
10 (c), if the court determines that the property that is the
11 subject of a partition action is heirs property, the court
12 shall determine the fair market value of the property by
13 ordering an appraisal pursuant to subsection (d).

14 (b) If all cotenants have agreed to the value of the
15 property or to another method of valuation, the court shall
16 adopt that value or the value produced by the agreed method of
17 valuation.

18 (c) If the court determines that the evidentiary value of
19 an appraisal is outweighed by the cost of the appraisal, the
20 court, after an evidentiary hearing, shall determine the fair
21 market value of the property and send notice to the parties of
22 the value.

23 (d) If the court orders an appraisal, the court shall
24 appoint a disinterested real estate appraiser licensed in this

1 State to determine the fair market value of the property
2 assuming sole ownership of the fee simple estate. On completion
3 of the appraisal, the appraiser shall file a sworn or verified
4 appraisal with the court.

5 (e) If an appraisal is conducted pursuant to subsection
6 (d), not later than 10 days after the appraisal is filed, the
7 court shall send notice to each party with a known address,
8 stating:

9 (1) the appraised fair market value of the property;

10 (2) that the appraisal is available at the clerk's
11 office; and

12 (3) that a party may file with the court an objection
13 to the appraisal not later than 30 days after the notice is
14 sent, stating the grounds for the objection.

15 (f) If an appraisal is filed with the court pursuant to
16 subsection (d), the court shall conduct a hearing to determine
17 the fair market value of the property not sooner than 30 days
18 after a copy of the notice of the appraisal is sent to each
19 party under subsection (e), whether or not an objection to the
20 appraisal is filed under subsection (e)(3). In addition to the
21 court-ordered appraisal, the court may consider any other
22 evidence of value offered by a party.

23 (g) After a hearing under subsection (f), but before
24 considering the merits of the partition action, the court shall
25 determine the fair market value of the property and send notice
26 to the parties of the value.

1 Section 7. Cotenant buyout.

2 (a) If any cotenant requested partition by sale, after the
3 determination of value under Section 6, the court shall send
4 notice to the parties that any cotenant except a cotenant that
5 requested partition by sale may buy all the interests of the
6 cotenants that requested partition by sale. (b) Not later
7 than 45 days after the notice is sent under subsection (a), any
8 cotenant except a cotenant that requested partition by sale may
9 give notice to the court that it elects to buy all the
10 interests of the cotenants that requested partition by sale.

11 (c) The purchase price for each of the interests of a
12 cotenant that requested partition by sale is the value of the
13 entire parcel determined under Section 6 multiplied by the
14 cotenant's fractional ownership of the entire parcel.

15 (d) After expiration of the period in subsection (b), the
16 following rules apply:

17 (1) If only one cotenant elects to buy all the
18 interests of the cotenants that requested partition by
19 sale, the court shall notify all the parties of that fact.

20 (2) If more than one cotenant elects to buy all the
21 interests of the cotenants that requested partition by
22 sale, the court shall allocate the right to buy those
23 interests among the electing cotenants based on each
24 electing cotenant's existing fractional ownership of the
25 entire parcel divided by the total existing fractional

1 ownership of all cotenants electing to buy and send notice
2 to all the parties of that fact and of the price to be paid
3 by each electing cotenant.

4 (3) If no cotenant elects to buy all the interests of
5 the cotenants that requested partition by sale, the court
6 shall send notice to all the parties of that fact and
7 resolve the partition action under Section 8(a) and (b).

8 (e) If the court sends notice to the parties under
9 subsection (d)(1) or (2), the court shall set a date, not
10 sooner than 60 days after the date the notice was sent, by
11 which electing cotenants must pay their apportioned price into
12 the court. After this date, the following rules apply:

13 (1) If all electing cotenants timely pay their
14 apportioned price into court, the court shall issue an
15 order reallocating all the interests of the cotenants and
16 disburse the amounts held by the court to the persons
17 entitled to them.

18 (2) If no electing cotenant timely pays its apportioned
19 price, the court shall resolve the partition action under
20 Section 8(a) and (b) as if the interests of the cotenants
21 that requested partition by sale were not purchased.

22 (3) If one or more but not all of the electing
23 cotenants fail to pay their apportioned price on time, the
24 court, on motion, shall give notice to the electing
25 cotenants that paid their apportioned price of the interest
26 remaining and the price for all that interest.

1 (f) Not later than 20 days after the court gives notice
2 pursuant to subsection (e) (3), any cotenant that paid may elect
3 to purchase all of the remaining interest by paying the entire
4 price into the court. After the 20-day period, the following
5 rules apply:

6 (1) If only one cotenant pays the entire price for the
7 remaining interest, the court shall issue an order
8 reallocating the remaining interest to that cotenant. The
9 court shall issue promptly an order reallocating the
10 interests of all of the cotenants and disburse the amounts
11 held by it to the persons entitled to them.

12 (2) If no cotenant pays the entire price for the
13 remaining interest, the court shall resolve the partition
14 action under Section 8(a) and (b) as if the interests of
15 the cotenants that requested partition by sale were not
16 purchased.

17 (3) If more than one cotenant pays the entire price for
18 the remaining interest, the court shall reapportion the
19 remaining interest among those paying cotenants, based on
20 each paying cotenant's original fractional ownership of
21 the entire parcel divided by the total original fractional
22 ownership of all cotenants that paid the entire price for
23 the remaining interest. The court shall issue promptly an
24 order reallocating all of the cotenants' interests,
25 disburse the amounts held by it to the persons entitled to
26 them, and promptly refund any excess payment held by the

1 court.

2 (g) Not later than 45 days after the court sends notice to
3 the parties pursuant to subsection (a), any cotenant entitled
4 to buy an interest under this section may request the court to
5 authorize the sale as part of the pending action of the
6 interests of cotenants named as defendants and served with the
7 complaint but that did not appear in the action.

8 (h) If the court receives a timely request under subsection
9 (g), the court, after hearing, may deny the request or
10 authorize the requested additional sale on such terms as the
11 court determines are fair and reasonable, subject to the
12 following limitations:

13 (1) a sale authorized under this subsection may occur
14 only after the purchase prices for all interests subject to
15 sale under subsections (a) through (f) have been paid into
16 court and those interests have been reallocated among the
17 cotenants as provided in those subsections; and

18 (2) the purchase price for the interest of a
19 nonappearing cotenant is based on the court's
20 determination of value under Section 6.

21 Section 8. Partition alternatives.

22 (a) If all the interests of all cotenants that requested
23 partition by sale are not purchased by other cotenants pursuant
24 to Section 7, or if after conclusion of the buyout under
25 Section 7, a cotenant remains that has requested partition in

1 kind, the court shall order partition in kind unless the court,
2 after consideration of the factors listed in Section 9, finds
3 that partition in kind will result in manifest prejudice to the
4 cotenants as a group. In considering whether to order partition
5 in kind, the court shall approve a request by two or more
6 parties to have their individual interests aggregated.

7 (b) If the court does not order partition in kind under
8 subsection (a), the court shall order partition by sale
9 pursuant to Section 10 or, if no cotenant requested partition
10 by sale, the court shall dismiss the action.

11 (c) If the court orders partition in kind pursuant to
12 subsection (a), the court may require that one or more
13 cotenants pay one or more other cotenants amounts so that the
14 payments, taken together with the value of the in-kind
15 distributions to the cotenants, will make the partition in kind
16 just and proportionate in value to the fractional interests
17 held.

18 Section 9. Consideration for partition in kind.

19 (a) In determining under Section 8(a) whether partition in
20 kind would result in manifest prejudice to the cotenants as a
21 group, the court shall consider the following:

22 (1) whether the heirs property practicably can be
23 divided among the cotenants;

24 (2) whether partition in kind would apportion the
25 property in such a way that the aggregate fair market value

1 of the parcels resulting from the division would be
2 materially less than the value of the property if it were
3 sold as a whole, taking into account the condition under
4 which a court-ordered sale likely would occur;

5 (3) evidence of the collective duration of ownership or
6 possession of the property by a cotenant and one or more
7 predecessors in title or predecessors in possession to the
8 cotenant who are or were relatives of the cotenant or each
9 other;

10 (4) a cotenant's sentimental attachment to the
11 property, including any attachment arising because the
12 property has ancestral or other unique or special value to
13 the cotenant;

14 (5) the lawful use being made of the property by a
15 cotenant and the degree to which the cotenant would be
16 harmed if the cotenant could not continue the same use of
17 the property;

18 (6) the degree to which the cotenants have contributed
19 their pro rata share of the property taxes, insurance, and
20 other expenses associated with maintaining ownership of
21 the property or have contributed to the physical
22 improvement, maintenance, or upkeep of the property; and

23 (7) any other relevant factor.

24 (b) The court may not consider any one factor in subsection
25 (a) to be dispositive without weighing the totality of all
26 relevant factors and circumstances.

1 Section 10. Open-market sale, sealed bids, or auction.

2 (a) If the court orders a sale of heirs property, the sale
3 must be an open-market sale unless the court finds that a sale
4 by sealed bids or an auction would be more economically
5 advantageous and in the best interest of the cotenants as a
6 group.

7 (b) If the court orders an open-market sale and the
8 parties, not later than 10 days after the entry of the order,
9 agree on a real estate broker licensed in this State to offer
10 the property for sale, the court shall appoint the broker and
11 establish a reasonable commission. If the parties do not agree
12 on a broker, the court shall appoint a disinterested real
13 estate broker licensed in this State to offer the property for
14 sale and shall establish a reasonable commission. The broker
15 shall offer the property for sale in a commercially reasonable
16 manner at a price no lower than the determination of value and
17 on the terms and conditions established by the court.

18 (c) If the broker appointed under subsection (b) obtains
19 within a reasonable time an offer to purchase the property for
20 at least the determination of value:

21 (1) the broker shall comply with the reporting
22 requirements in Section 11; and

23 (2) the sale may be completed in accordance with state
24 law other than this Act.

25 (d) If the broker appointed under subsection (b) does not

1 obtain within a reasonable time an offer to purchase the
2 property for at least the determination of value, the court,
3 after hearing, may:

4 (1) approve the highest outstanding offer, if any;

5 (2) redetermine the value of the property and order
6 that the property continue to be offered for an additional
7 time; or

8 (3) order that the property be sold by sealed bids or
9 at an auction.

10 (e) If the court orders a sale by sealed bids or an
11 auction, the court shall set terms and conditions of the sale.
12 If the court orders an auction, the auction must be conducted
13 under Article XVII of the Code of Civil Procedure.

14 (f) If a purchaser is entitled to a share of the proceeds
15 of the sale, the purchaser is entitled to a credit against the
16 price in an amount equal to the purchaser's share of the
17 proceeds.

18 Section 11. Report of open-market sale.

19 (a) Unless required to do so within a shorter time by
20 Article XVII of the Code of Civil Procedure, a broker appointed
21 under Section 10(b) to offer heirs property for open-market
22 sale shall file a report with the court not later than seven
23 days after receiving an offer to purchase the property for at
24 least the value determined under Section 6 or 10.

25 (b) The report required by subsection (a) must contain the

1 following information:

2 (1) a description of the property to be sold to each
3 buyer;

4 (2) the name of each buyer;

5 (3) the proposed purchase price;

6 (4) the terms and conditions of the proposed sale,
7 including the terms of any owner financing;

8 (5) the amounts to be paid to lienholders;

9 (6) a statement of contractual or other arrangements or
10 conditions of the broker's commission; and

11 (7) other material facts relevant to the sale.

12 Section 700. The Code of Civil Procedure is amended by
13 changing Sections 17-101, 17-102, 17-105, and 17-106 as
14 follows:

15 (735 ILCS 5/17-101) (from Ch. 110, par. 17-101)

16 Sec. 17-101. Compelling partition. When lands, tenements,
17 or hereditaments are held in joint tenancy or tenancy in
18 common, other than in accordance with the Uniform Partition of
19 Heirs Property Act, or other form of co-ownership and
20 regardless of whether any or all of the claimants are minors or
21 adults, any one or more of the persons interested therein may
22 compel a partition thereof by a verified complaint in the
23 circuit court of the county where the premises or part of the
24 premises are situated. If lands, tenements or hereditaments

1 held in joint tenancy or tenancy in common are situated in 2 or
2 more counties, the venue may be in any one of such counties,
3 and the circuit court of any such county first acquiring
4 jurisdiction shall retain sole and exclusive jurisdiction.
5 Ownership of an interest in the surface of lands, tenements, or
6 hereditaments by a co-owner of an interest in minerals
7 underlying the surface does not prevent partition of the
8 mineral estate. This amendatory Act of the 92nd General
9 Assembly is a declaration of existing law and is intended to
10 remove any possible conflicts or ambiguities, thereby
11 confirming existing law pertinent to the partition of interests
12 in minerals and applies to all actions for the partition of
13 minerals now pending or filed on or after the effective date of
14 this amendatory Act of the 92nd General Assembly. Nothing in
15 this amendatory Act of the 92nd General Assembly shall be
16 construed as allowing an owner of a mineral interest in coal to
17 mine and remove the coal by the surface method of mining
18 without first obtaining the consent of all of the owners of the
19 surface to the mining and removal of coal by the surface method
20 of mining. Ownership of an interest in minerals by a co-owner
21 of an interest in the surface does not prevent partition of the
22 surface. The ownership of an interest in some, but not all, of
23 the mineral estate by a co-owner of an interest in other
24 minerals does not prevent the partition of the co-owned mineral
25 estate.

26 (Source: P.A. 92-379, eff. 8-16-01; 93-925, eff. 8-12-04.)

1 (735 ILCS 5/17-102) (from Ch. 110, par. 17-102)

2 Sec. 17-102. Complaint. The verified complaint shall
3 particularly describe the premises sought to be divided, and
4 shall set forth the interests of all parties interested
5 therein, so far as the same are known to the plaintiffs,
6 including tenants for years or for life, and of all persons
7 entitled to the reversion, remainder or inheritance, and of
8 every person who, upon any contingency, may be or become
9 entitled to any beneficial interest in the premises, so far as
10 the same are known to the plaintiffs, and shall ask for the
11 division and partition of the premises according to the
12 respective rights of the parties interested therein, or in
13 accordance with the Uniform Partition of Heirs Property Act ~~if~~
14 ~~a division and partition of the same cannot be made without~~
15 ~~manifest prejudice to the owners, that a sale thereof be made~~
16 ~~and the proceeds divided according to the respective rights of~~
17 ~~the parties.~~

18 (Source: P.A. 82-280.)

19 (735 ILCS 5/17-105) (from Ch. 110, par. 17-105)

20 Sec. 17-105. Judgment. The court shall ascertain and
21 declare the rights, titles and interest of all the parties in
22 such action, the plaintiffs as well as the defendants, and
23 shall enter judgment according to the rights of the parties.
24 After entry of judgment adjudicating the rights, titles, and

1 interests of the parties, the court upon further hearing shall
2 determine whether or not the premises or any part thereof can
3 be divided among the parties without manifest prejudice to the
4 parties in interest. If the court finds that a division can be
5 made, then the court shall enter further judgment fairly and
6 impartially dividing the premises among the parties with or
7 without owelty. If the court finds that the whole or any part
8 of the premises sought to be partitioned cannot be divided
9 without manifest prejudice to the owners thereof and is not
10 governed by the Uniform Partition of Heirs Property Act, then
11 the court shall order the premises not susceptible of division
12 to be sold at public sale in such manner and upon such terms
13 and notice of sale as the court directs. If the court orders
14 the sale of the premises or any part thereof, the court shall
15 fix the value of the premises to be sold. No sale may be
16 approved for less than two-thirds of the total amount of the
17 valuation of the premises to be sold. If it appears to the
18 court that any of the premises will not sell for two-thirds of
19 the amount of the valuation thereof, the court upon further
20 hearing may either revalue the premise and approve the sale or
21 order a new sale.

22 (Source: P.A. 93-925, eff. 8-12-04.)

23 (735 ILCS 5/17-106) (from Ch. 110, par. 17-106)

24 Sec. 17-106. Appointment of commissioner and surveyor. The
25 court in its discretion, sua sponte, or on the motion of any

1 interested party, must ~~may~~ appoint a disinterested
2 commissioner who, subject to direction by the court, shall
3 report to the court in writing under oath as to whether or not
4 the premises are subject to division without manifest prejudice
5 to the rights of the parties and, if so, report how the
6 division may be made. The court may authorize the employment of
7 a surveyor to carry out or assist in the division of the
8 premises. The fees and expenses of the commissioner and of the
9 surveyor and the person making the sale shall be taxed as costs
10 in the proceedings.

11 (Source: P.A. 93-925, eff. 8-12-04.)

12 Section 999. Effective date. This Act takes effect upon
13 becoming law.